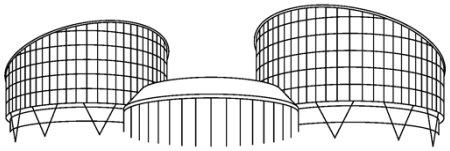

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LIU v. POLAND

(Application no. 37610/18)

JUDGMENT

Art 3 • Proposed extradition to China where the applicant would face a real risk of ill-treatment in detention • Applicant's allegations not duly examined by the domestic authorities • Considerable weight attached to credible and consistent allegations of serious abuses equated to a general situation of violence • Benefit of the doubt granted to the applicant seeking protection • Informal assurances from China offering insufficient guarantees
Art 5 § 1 (f) • Unlawful detention due to unjustified delays in the proceedings

STRASBOURG

6 October 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Liu v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *Judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 37610/18) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Hung Tao Liu ("the applicant") from Taiwan, on 9 August 2018;

the decision to give notice to the Polish Government ("the Government") of the complaints concerning Article 3, Article 5 § 1 and Article 6 § 1 of the Convention;

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

the parties' observations;

Having deliberated in private on 30 August 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complained that his extradition to China would violate Article 3 and Article 6 § 1 of the Convention as – if extradited and tried – he would be at risk of torture and inhuman and degrading treatment; moreover, he would be denied a fair trial. He also complained under Article 5 § 1 that his detention pending extradition was unreasonably long and, therefore, arbitrary.

THE FACTS

2. The applicant was born in 1980 and is currently detained in the Warsaw-Białołęka Remand Centre. The applicant was represented by Mr M. Górski, a lawyer practising in Łódź.

3. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND OF THE APPLICANT'S CASE

5. The applicant was sought within the context of an international Chinese-Spanish investigation concerning a vast international telecoms fraud syndicate.

6. On 8 December 2016 Interpol issued, in connection with the aforementioned investigation, a Red Notice in respect of the applicant, requesting that he be located and provisionally arrested pending his extradition. According to the Red Notice, the applicant was suspected of being the deputy head of an international telecoms fraud syndicate and was to be charged with fraud on a grand scale.

7. On 6 August 2017 the applicant was arrested in Poland.

II. EXTRADITION PROCEEDINGS

8. On 1 September 2017 the Chinese authorities requested Poland to extradite the applicant to the People's Republic of China.

9. On 13 September 2017 the Warsaw Regional Prosecutor (*Prokurator Okręgowy*) lodged with the Warsaw Regional Court (*Sąd Okręgowy*) an application for authorisation to extradite the applicant to China on the basis of the above extradition request. The Regional Court decided to ask the Chinese authorities for additional information – in particular, information concerning any relevant criminal proceedings in China and guarantees of a fair trial, as well as details about the conditions of the applicant's future detention. The requested information was provided on 8 January 2018 by the Criminal Investigations Department of the Ministry of Public Security of the Peoples' Republic of China. The note contained a summary of the investigation in which the applicant had been implicated. It also stated that upon his extradition, the applicant would be detained at the Boluo Detention Centre in Guangdong Province, where his human rights would be respected and whose operations were supervised by People's Prosecutors. The Criminal Investigations Office also indicated that Chinese detention facilities were open to the public and that in 2012 dozens of domestic and foreign journalists had been allowed entry to a detention facility in Beijing. It further indicated that in 2016 a representative of the Ministry of Justice of Taiwan had visited thirty-two Taiwanese detainees in a detention centre in Zhuhai (Guangdong Province). The note contained an extensive summary of the human-rights protection system in China and a guarantee that the applicant's human rights would be protected.

10. On 27 February 2018 the Warsaw Regional Court held that the applicant's extradition to China would be in conformity with Polish law. The court stressed that the Chinese authorities had presented sufficient arguments to substantiate a high probability that the applicant had committed the offence with which he had been charged. It also established that the remaining

conditions for his extradition to be held legal had been met. In particular, the offence with which the applicant had been charged was also criminalised under Polish law, its prosecution was not time-barred, it had not yet been adjudicated in any State and was not subject to any criminal proceedings conducted in Poland. The Regional Court also observed that the applicant had not been granted asylum in Poland. It further found that there were no other reasons to refuse the applicant's extradition, noting in particular that his prosecution was not based on political or other discriminatory grounds and that there were no reasons to suspect that the applicant would be at risk of torture, other forms of ill-treatment or a flagrant denial of his right to a fair trial. It indicated, *inter alia*, that the Chinese authorities had provided sufficient information concerning his future detention and trial and that none of the general reports concerning the human rights situation in China presented by the applicant were relevant to his situation and prosecution. Referring to allegations of torture and instances of ill-treatment reported by Amnesty International, the Regional Court held that such reports always highlighted irregularities, while ignoring positive developments in the State concerned. It also reasoned that single instances of torture did not mean that it was being used in every case and that the applicant would be subjected to torture. The applicant and his lawyer appealed against that decision.

11. On 26 July 2018 the Warsaw Court of Appeal (*Sąd Apelacyjny*) upheld the decision of the Warsaw Regional Court. It relied on the same reasoning as the court of first instance. It indicated, in particular, that it was not the role of the domestic courts to assess the overall evidence against the applicant but only to establish that it was sufficient for the purposes of determining that there was a high probability that the applicant had committed the offences in question. The Court of Appeal also emphasised that there were no reasons to conclude that the applicant would be at any risk of a violation of his rights. In particular, it noted that the applicant had relied mainly on the fact that he was a citizen of the unrecognised Republic of China (Taiwan); however, the court also noted that his prosecution was not related to any political crimes, but to common offences. Also, he had not engaged in any political activities in the past. The Court of Appeal concluded that reports of instances of human rights violations (including those issued by Amnesty International) concerned the general state of affairs in China and did not state that such violations occurred in every set of criminal proceedings.

12. On 9 August 2018 the applicant applied for an interim measure, pursuant to Rule 39 of the Rules of the Court, requesting the Court to stop his extradition to China. In relation to that request, the Court (the Duty Judge) decided to request further information from the Government concerning, specifically, the date of the planned extradition and whether diplomatic assurances had been requested by Poland from the Chinese authorities in relation to fears voiced by the applicant regarding possible violations of his Convention Rights if he were to be returned to China.

13. The Government informed the Court that the applicant's case was pending before the Minister of Justice and that no diplomatic assurances had been sought. They also submitted that on 6 September 2018 the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) had requested the relevant governmental authority to provide him with the applicant's case file in order for him to be able to analyse whether he should lodge a cassation appeal on behalf of the applicant.

14. On 12 September 2018 the Court (President of the Chamber to which the case has been allocated) decided to apply Rule 39 of the Rules of Court and to indicate to the Polish Government that they should not extradite the applicant until further notice.

15. On 7 May 2019 the Commissioner for Human Rights lodged a cassation appeal against the decision of 26 July 2018 with the Supreme Court (*Sąd Najwyższy*). The Commissioner argued that the court of second instance had failed to properly examine whether the applicant was at risk of being sentenced to life imprisonment and what were the possibilities of that sentence being reduced. He relied in particular on Article 3 of the Convention.

16. On 1 October 2020 the Supreme Court (case no. II KK 154/19) dismissed the Commissioner's cassation appeal. The Supreme Court held that the courts of first and second instance thoroughly examined the character of offences of which the applicant had been suspected and the possible penalty for them under the Chinese law. They had also taken into consideration the requirements of Articles 3 and 6 of the Convention. They had analysed, in particular, the conditions in which the applicant would be placed after his extradition. The Supreme Court further indicated that even though the applicant was at risk of being sentenced to life imprisonment, such a sentence would not be automatic and it was possible that it might subsequently be reduced. It held that the sole fact that life imprisonment was one of the penalties that could be imposed on the applicant did not amount to a violation of Article 3 of the Convention.

17. The Government informed the Court of the judgment of the Supreme Court on 11 January 2021.

III. THE APPLICANT'S APPLICATION FOR INTERNATIONAL PROTECTION

18. On 15 November 2017 the applicant lodged an application for international protection. On 3 August 2018 the Head of the Aliens Office (*Szef Urzędu do Spraw Cudzoziemców*) issued a decision refusing to grant the applicant refugee status or subsidiary protection. The applicant did not appeal against that decision.

IV. THE APPLICANT'S DETENTION

19. On 6 August 2017 the applicant was arrested.

20. On 8 August 2017 the Warsaw Regional Court decided to detain the applicant until 15 September 2017 in order to secure the proper course of the extradition proceedings. The decision was based on the Interpol Red Notice and the fact that the Chinese authorities had requested the applicant's extradition. The applicant did not appeal against that decision.

21. On 14 September 2017 the Warsaw Regional Court extended the applicant's detention until 15 January 2018. It indicated in particular that the applicant presented a flight risk as he did not reside in Poland and did not have any links with Poland. It also noted that he was facing the possibility of receiving a severe sentence (of up to life imprisonment) and that the extradition procedure had already been initiated.

22. Following an appeal by the applicant, on 9 November 2017 the Warsaw Court of Appeal upheld the above-mentioned decision, referring to the same reasons as those cited by the court of first instance. It also indicated that the risk of the applicant obstructing the proper course of the proceedings was very real in the light of the fact that he had been previously hiding from the local authorities in Spain.

23. The applicant's detention was further extended several times by the Warsaw Regional Court on 12 January, 13 April, 12 September 2018 and 12 February 2019. On each occasion the domestic court cited the same reasons for the applicant's detention. It indicated that the applicant – according to his statements – had entered Poland for the purpose of tourism and had no ties to the country. It also stated that he had previously fled the authorities in Spain and had travelled through several European States. In its reasoning in respect of the last two decisions, the Regional Court also indicated that the first-instance court had held that the applicant's extradition would be in conformity with Polish law (see paragraphs 10-11 above) and that the extradition proceedings should accordingly be concluded promptly. It also held that, in the light of the applicant's sound financial situation, the fact that he had the financial resources to travel, and his history of fleeing from the authorities, there were no measures other than detention that could ensure the proper course of the extradition proceedings. The applicant did not appeal against any of those decisions.

24. On 31 July 2019 the Warsaw Court of Appeal extended the applicant's detention until 6 November 2019. Its decision was based on the same reasons as those given for the previous decisions extending the applicant's detention. It also indicated that the applicant's case was particularly complex, given the fact that the cassation appeal lodged by the Commissioner for Human Rights was pending before the Supreme Court (see paragraph 15 above) and that the Court had indicated an interim measure obliging the Polish Government not to extradite the applicant (see paragraph 14 above).

25. The applicant appealed against that decision. He submitted that his detention had thus far lasted for over two years and was based on the risk of his being sentenced to severe punishment in a country, which did not guarantee him a fair trial. He also argued that the extradition proceedings had been prolonged for reasons that were not attributable to him. He also emphasised that his detention was extremely harmful to him, given that he did not speak Polish and thus had no possibility of communicating with his co-detainees, who did not speak English or his native Chinese. Also, the domestic courts were mistaken in their conclusion that he had been hiding from justice. The applicant submitted that prior to his arrest he had not been aware that he was being sought by the authorities and that he had travelled extensively as part of his work.

26. On 20 August 2019 the Warsaw Court of Appeal upheld the decision of 31 July 2019. It noted that the applicant was aware of the fact that the domestic courts had held that his extradition would be in conformity with Polish law and that, in consequence, he could expect that he would be extradited and that it was likely that he would receive a severe sentence in China. Consequently, if he were not detained, he would be likely to act in a manner that would render extradition impossible. Moreover, the Court of Appeal reasoned that if there had been sufficient basis for the issuance of an arrest warrant by the country seeking the applicant's extradition, then there were also sufficient reasons for deeming it probable that he would go into hiding in the country that was about to extradite him. It also observed that – if released – the applicant was likely to leave Poland.

27. The applicant's detention was further prolonged by the Warsaw Court of Appeal on 4 November 2019 and again (until 6 July 2020) on 31 January 2020. The court cited the same reasons for prolonging the applicant's detention as in its earlier decisions. It indicated in particular that the case was still pending before the Supreme Court and that the Court had obliged the Government not to extradite the applicant until further notice.

28. The applicant appealed against both of the above-mentioned decisions. The Warsaw Court of Appeal, acting as a court of second instance upheld them on 17 January and 24 April 2020 respectively.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

29. The extradition procedure is regulated by Articles 602-606 of the 1997 Code of Criminal Procedure (*Kodeks postępowania karnego* – "the Code"). Under the Code's provisions, the procedure consists of two stages. Firstly, the domestic courts decide whether the extradition in question would be in accordance with the Polish law; secondly, the Minister of Justice decides whether to extradite the person concerned.

30. Under Article 603 §§ 1-4 of the Code, a regional court delivers a decision on the legality of an extradition request lodged by a foreign State – usually after hearing the person to whom the request relates, or if necessary, after conducting the evidentiary proceedings. The decision is delivered at a court hearing at which both the prosecutor and the defence lawyer of the person concerned may be present, and it can be appealed against. The decision of the court of second instance is final. However, under Article 521 of the Code the Prosecutor General and the Commissioner for Human Rights may lodge a cassation appeal against any final decision that concludes the proceedings in question.

31. Under Article 603 § 5 of the Code, a regional court transfers its final decision, together with the case file, to the Minister of Justice. The Minister of Justice then decides on the request and communicates its decision to the relevant authority of the foreign State. The Minister may refuse to extradite the person concerned for one of the reasons specified in Article 604 § 2 of the Code (see paragraph 32 below) or for other reasons – in particular, reasons of a political and/or humanitarian nature. In the event that the domestic courts finally decide that the extradition would be contrary to the law, the Minister cannot consent to the extradition.

32. The conditions to be fulfilled in order for extradition to be legal are set out in Article 604 § 1 of the Code, which stipulates that a person cannot be extradited, *inter alia*, if there is a risk that he or she would, if convicted, be sentenced to death, or if his or her rights and freedoms would be violated in the requesting State, or if he or she is to be prosecuted for a non-violent political offence. Moreover, paragraph 2 of Article 604 provides a non-exhaustive list of reasons on the basis of which a request for extradition may be refused; that list includes the ground that the person in question has his or her domicile in Poland or that he or she is charged with an offence of a military, tax-related or political nature.

33. The principles governing proceedings in respect of detention pending extradition are regulated by Articles 605 and 605a of the Code and by the general provisions concerning detention during criminal proceedings (*tymczasowe aresztowanie*), which are set out in the Court's judgments in the cases of *Gołek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006); *Kauczor v. Poland* (no. 45219/06, § 25-33, 3 February 2009); and *Porowski v. Poland* (no. 34458/03, § 71-82, 21 March 2017).

II. REPORTS ON THE SITUATION IN CHINA

A. United Nations Documents

1. Concluding Observations of the United Nations Committee against Torture regarding China dated 12 December 2008 and 3 February 2016

34. A document entitled "List of issues to be considered during the examination of the fourth periodic report of China" (CAT/C/CHN/Q/4), examined by the UN Committee against Torture (CAT) at its forty-first session in November 2008, states, in so far as relevant:

> "2. According to information before the Committee, despite new laws and regulations adopted by the State party to prevent torture and ill-treatment, an array of mutually reinforcing conditions contribute to its continued pervasiveness in the criminal justice system. A lack of information regarding torture and ill-treatment is allegedly compounded by the fact that much basic data is classified under the State secrets system ..."

35. In its Concluding Observations of 12 December 2008 on China (CAT/C/CHN/CO/4) the CAT made the following observations:

> "11. Notwithstanding the State party's efforts to address the practice of torture and related problems in the criminal justice system, the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, the Committee notes with concern the lack of legal safeguards for detainees, including:
>
> ...
>
> (d) Continued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects, as in the case of Yang Chunlin. Furthermore, while the Committee appreciates that the Supreme Court has issued several decisions to prevent the use of confessions obtained under torture as evidence before the courts, Chinese Criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention;
>
> (e) The lack of an effective independent monitoring mechanism on the situation of detainees (arts. 2, 11 and 15) ...
>
> 12. While the Committee takes note of the information from the State party on conditions of detention in prisons, it remains concerned about reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody ...
>
> 16. While taking note of the oral information from the State party on the conditions of application of the 1988 Law on the Preservation of State Secrets in the People's Republic of China, the Committee expressed grave concern over the use of this law which severely undermines the availability of information about torture, criminal justice and related issues. The broad application of this law raises a range of issues relating to the application of the Convention in the State party:

(a) This Law prevents the disclosure of crucial information that would enable the Committee to identify possible patterns of abuse requiring attention, such as disaggregated statistical information on detainees in all forms of detention and custody and ill-treatment in the State party, information on groups and entities deemed to be 'hostile organizations', 'minority splittist organizations', 'hostile religious organizations', 'reactionary sects', as well as basic information on places of detention, information about the 'circumstances of prisoners of great influence', violations of the law or codes of conduct by public security organs, information on matters inside prisons;

...

(d) The classification of a case falling under the State Secrets law allows officials to deny detainees access to lawyers, a fundamental safeguard for preventing torture, and such denial appears to be in contradiction with the 2007 amended Lawyers Law (arts. 2 and 19)."

36. In its Concluding Observations of 3 February 2016 on China (CAT/C/CHN/CO/5) the CAT made the following observations:

"6. ... the Committee regrets that the recommendations identified for follow-up in the previous concluding observations have not yet been implemented. Those recommendations concerned: legal safeguards to prevent torture; the State Secrets Law and reported harassment of lawyers, human rights defenders and petitioners; the lack of statistical information; ...

7. The Committee notes that various provisions of the Criminal Procedure Law and the Criminal Law, as amended in 2014, prohibit and punish specific acts that could be considered as torture. However, it remains concerned that those provisions do not include all the elements of the definition of torture set out in article 1 of the Convention. In particular:

(a) While noting the provisions established to prohibit the extraction of confessions under torture or the use of violence to obtain a witness statement (article 247 of the Criminal Law), the Committee is concerned that the prohibition may not cover all public officials and persons acting in an official capacity. Moreover, the provisions do not address the use of torture for purposes other than extracting confessions from defendants or criminal suspects;

(b) The crime of beating or ill-treating detainees, contained in article 248 of the Criminal Law, restricts the scope of the crime to the actions of officers of an institution of confinement or of other detainees at the instigation of those officers. It is also restricted to the infliction of physical abuse only.

8. The Committee appreciates that the Supreme People's Court recognizes as torture the use of other methods that cause the defendant to suffer severe mental pain or suffering (see para. 5 (a) above). However, it remains concerned that the Court's interpretation applies to questions regarding exclusion of evidence rather than criminal liability (arts. 2 and 4) ...

18. The Committee is deeply concerned about the unprecedented detention and interrogation of, reportedly, more than 200 lawyers and activists since 9 July 2015. Of those, 25 remain reportedly under residential surveillance at a designated location and 4 are allegedly unaccounted for. This reported crackdown on human rights lawyers follows a series of other reported escalating abuses on lawyers for carrying out their professional responsibilities, particularly on cases involving government accountability and issues such as torture and the defence of human rights activists and religious

practitioners. Such abuses include detention on suspicion of broadly defined charges, such as 'picking quarrels and provoking trouble', and ill-treatment and torture while in detention. ... The Committee is concerned that the above-mentioned abuses and restrictions may deter lawyers from raising reports of torture in their clients' defence for fear of reprisals, weakening the safeguards of the rule of law that are necessary for the effective protection against torture (art. 2) ...

20. Notwithstanding the numerous legal and administrative provisions prohibiting the use of torture, the Committee remains seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions. It also expresses concern over information that the majority of allegations of torture and ill-treatment take place during pretrial and extralegal detention and involve public security officers, who wield excessive power during the criminal investigation without effective control by procuratorates and the judiciary. This overarching power is reportedly further intensified by the public security's joint responsibilities over the investigation and the administration of detention centres which, in the Committee's view, creates an incentive for the investigators to use detention as a means to compel detainees to confess (arts. 2, 12, 13 and 16) ...

24. The Committee remains concerned over allegations of death in custody as a result of torture or resulting from lack of prompt medical care and treatment during detention, as was reportedly the case of Cao Shunli and Tenzin Delek Rinpoche. It is also concerned over information that the procedures in place to investigate deaths in custody are often ignored in practice and relatives face many obstacles to press for an independent autopsy and investigation or to recover the remains. The Committee regrets that, despite its requests to the State party's delegation to provide statistical data on the number of deaths in custody during the period under review, no information has been received on this subject, or on any investigations into such deaths. The Committee also regrets the State party's failure to provide information on the number of instances in which the procuratorates overturned the medical appraisals of death due to illness made by prison medical doctors. No information has been provided either on the number of instances in which relatives of the deceased objected to the procuratorate's conclusion on the cause of the death (arts. 2, 11, 12, 13 and 16) ...

30. Recalling its previous recommendations (see CAT/C/CHN/CO/4, paras. 16 and 17), the Committee remains concerned at the use of State secrecy provisions to avoid the availability of information about torture, criminal justice and related issues. While appreciating the State party's assertion that 'information regarding torture does not fall within the scope of State secrets', the Committee expresses concern at the State party's failure to provide a substantial amount of data requested by the Committee in the list of issues and during the dialogue. In the absence of the information requested, the Committee finds itself unable to fully assess the State party's actions in the light of the provisions of the Convention. Furthermore, the Committee regrets that the same concerns raised in its previous recommendation with regard to the 1988 Law on the Preservation of State Secrets persist in relation to the 2010 Law on Guarding State Secrets. The Committee is also disturbed at reports that a significant amount of information related to torture and the actions of public security authorities under the Criminal Procedure Law remain out of the public domain owing to the State secrets exception of the Regulations on Open Government Information. Furthermore, it notes with concern the limited scope of the Regulations on Open Government Information to information about administrative actions by administrative organs, excluding matters within the criminal law system (arts. 12, 13, 14 and 16)."

2. *Reports of the United Nations Special Rapporteur on torture*

37. From 20 November to 2 December 2005 the former United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Manfred Nowak, undertook a visit to China. In his report of 10 March 2006, submitted to the Economic and Social Council, Mr Nowak observed, *inter alia*:

> "... Though on the decline, particularly in urban areas, the Special Rapporteur believes that torture remains widespread in China ...
>
> While the basic conditions in the detention facilities seem to be generally satisfactory, the Special Rapporteur was struck by the strictness of prison discipline and a palpable level of fear and self-censorship when talking to detainees."

38. Since at least 2009, the Chinese government has not issued a standing invitation to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to conduct an official visit, despite many requests for it to do so.[1]

B. Reports of the United States Department of State

39. In its 2018 Report on Human Rights Practices in China, the United States Department of State noted, *inter alia*:

> "The law prohibits the physical abuse and mistreatment of detainees and forbids prison guards from coercing confessions, insulting prisoners' dignity, and beating or encouraging others to beat prisoners. Amendments to the criminal procedure law exclude evidence obtained through illegal means, including coerced confessions, in certain categories of criminal cases. Enforcement of these legal protections continued to be lax.
>
> Numerous former prisoners and detainees reported they were beaten, raped, subjected to electric shock, forced to sit on stools for hours on end, hung by the wrists, deprived of sleep, force fed, forced to take medication against their will, and otherwise subjected to physical and psychological abuse. Although prison authorities abused ordinary prisoners, they reportedly singled out political and religious dissidents for particularly harsh treatment.
>
> ...
>
> Conditions in penal institutions for both political prisoners and criminal offenders were generally harsh and often life threatening or degrading.
>
> Physical Conditions: Authorities regularly held prisoners and detainees in overcrowded conditions with poor sanitation. Food often was inadequate and of poor quality, and many detainees relied on supplemental food, medicines, and warm clothing provided by relatives when allowed to receive them. Prisoners often reported sleeping on the floor because there were no beds or bedding. In many cases provisions for sanitation, ventilation, heating, lighting, and access to potable water were inadequate.

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[1] https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freedoms-china, accessed 22 March 2022.

Adequate, timely medical care for prisoners remained a serious problem, despite official assurances prisoners have the right to prompt medical treatment...

Authorities considered information about prisons and various other types of administrative and extralegal detention facilities to be a state secret, and the government typically did not permit independent monitoring."

C. Reports of Amnesty International

40. An Amnesty International report entitled "China: No end in sight – Torture and forced confessions in China", published on 11 November 2015, in so far as relevant, reads:

"The lawyers described their own experiences when trying to carry out their work and the difficulties they often faced in raising claims of torture and other ill-treatment, getting these claims heard, and ultimately achieving justice for their clients. They often expressed their frustration with the system they feel is not adequately addressing torture and implementing existing prohibitions. Many related stories of torture their clients suffered in detention centres and unofficial detention facilities including black jails – torture and other ill-treatment often at the hands of police or the procuratorate or other detainees on orders of officials.

They almost uniformly concur that the extraction of confessions through torture remains widespread in pre-trial detention, in particular in cases considered politically sensitive by the government, where officials are detained for alleged corruption charges and cases involving religious activities, including Falun Gong practitioners. However the lawyers also gave accounts of torture and forced 'confessions' in other criminal and fraud cases as well.

Most chilling is the harassment and torture and ill-treatment the lawyers themselves faced as the authorities tried to dissuade them from investigating torture claims, seeking redress and otherwise carrying out their work. This seems a calculated efforts by authorities to dissuade lawyers from taking up such cases and could have an extremely negative impact on individuals who are trying to exercise their rights to fair trial and to be free from arbitrary detention, torture and other ill-treatment and a range of other human rights violations.

...

Amnesty International has documented cases of torture and other ill-treatment since 2010 both as means of punishment and to extract confessions. Sixteen of the 37 lawyers interviewed for this report also described torture reported by their clients either to extract 'confessions' and other evidence or as punishment for detainees sometimes carried out by officials and sometimes by fellow inmates likely at the instigation of officials. Many of the lawyers' clients were involved in "'sensitive cases' – petitioners, religious practitioners, or activists charged with the offences of 'inciting subversion of state power' or 'picking quarrels and provoking troubles' due to their activism – but others were charged with crimes that would not necessarily garner political attention. Beijing lawyer Wu Hongwei described various kinds of torture to which his clients have been subjected including cases of religious practitioners but also regular criminal cases."

41. The chapter on China of "Amnesty International Report 2014/15: The State of The World's Human Rights", released on 24 February 2016, in so far as relevant, reads:

"Torture and other ill-treatment remained widespread in detention and during interrogation, largely because of shortcomings in domestic law, systemic problems in the criminal justice system, and difficulties with implementing rules and procedures in the face of entrenched practices. Lawyer Yu Wensheng was tortured during his detention from October 2014 to January 2015 at Daxing Detention Centre in Beijing. He was questioned for 15 to 16 hours every day while seated on a rigid restraint chair, handcuffed for long hours and deprived of sleep."

42. The chapter on China of "Amnesty International Report 2014/15: The State of The World's Human Rights", released on 22 February 2017, in so far as relevant, reads:

"Shortcomings in domestic law and systemic problems in the criminal justice system resulted in widespread torture and other ill-treatment and unfair trials."

D. Report of Human Rights Watch

43. A Human Rights Watch report entitled "Tiger Chairs and Cell Bosses – Police Torture of Criminal Suspects in China", published on 13 May 2015, in so far as relevant, reads:

"Our analysis of court cases and interviews with former detainees show that police torture and ill-treatment of suspects in pre-trial detention remains a serious concern. Former detainees described physical and psychological torture during police interrogations, including being hung by the wrists, being beaten with police batons or other objects, and prolonged sleep deprivation.

Some said they were restrained for days in so-called 'tiger chairs' (used to immobilize suspects during interrogations), handcuffs, or leg irons; one convicted prisoner awaiting review of his death sentence had been handcuffed and shackled for eight years. Some detainees spoke about abuses at the hands of 'cell bosses,' fellow detainees used by detention center police as *de facto* managers of each multi-person cell. In some cases, the abuse resulted in death or permanent physical or mental disabilities. Most suspects who complained of torture to the authorities had been accused of common crimes such as theft. Interviewees said torture is particularly severe in major cases with multiple suspects, such as in organized or triad-related crimes.

In most of the cases we examined, police used torture and other ill-treatment to elicit confessions on which convictions could be secured. Abuses were facilitated by suspects' lack of access to lawyers, family members, and doctors not beholden to the police. Former detainees and relatives described the difficulty of retaining lawyers willing to challenge the police in court over allegations of mistreatment. In addition, many told Human Rights Watch that medical personnel who have the opportunity to report apparent torture or ill-treatment do not do so, denying detainees a critical source to validate their allegations. Videotaped interrogations are routinely manipulated, such as by first torturing the suspects and then taping the confession, further weakening suspects' claims of ill-treatment. Police use of torture outside detention centers means that detainees often live in terror of being taken from the centers, whether for purported transfers to another facility or for any other reason.

...

Our research also shows that criminal suspects are at risk of ill-treatment in detention at times other than during interrogations. So-called cell bosses, detainees who act as *de facto* managers of a cell, at times mistreat or beat detainees. Police subject some

detainees to the use of restraints in so-called stress positions or prolonged solitary confinement to punish them, or to force them to work long hours without pay. While authorities say that the numbers are down, detainees continue to die in custody, in many cases allegedly due to torture and ill-treatment by police officers, guards, and fellow detainees, or prolonged lack of adequate medical attention."

E. Report of Freedom House

44. Freedom House stated the following concerning the situation in China during 2021 in its "Freedom in the World 2022" report:

"Reforms to the criminal justice system in recent decades were ostensibly meant to guarantee better access to lawyers, allow witnesses to be cross-examined, and establish other safeguards to prevent wrongful convictions. However, violations of due process are widespread in practice. Criminal trials are frequently held in secret, and the conviction rate is estimated at 98 percent or more. While adjudication of routine civil and administrative disputes is considered more fair, cases that touch on politically sensitive issues or the interests of powerful groups are subject to decisive "guidance" from political-legal committees.

Prosecutions rely heavily on confessions, many of which are obtained through torture, despite laws prohibiting such practices. Forced confessions are often televised. A multiyear crackdown on human rights lawyers has left defendants without effective or independent legal counsel, while the lawyers affected are either in jail, under house arrest, or unable to continue their work.

...

Conditions in places of detention are harsh, with reports of inadequate food, regular beatings, and deprivation of medical care. In addition to their use to extract confessions, torture and other forms of coercion are widely employed to force political and religious dissidents to recant their beliefs. Security agents routinely flout legal protections, and impunity is the norm for police brutality and suspicious deaths in custody. Citizens and lawyers who seek redress for such abuse often meet with reprisals or imprisonment. In April 2021, anticorruption activist Guo Hongwei died in a prison hospital under suspicious circumstances while serving a 13-year prison sentence."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that his extradition to China, if carried out, would be in breach of the prohibition of torture and inhuman and degrading treatment. He relied on Article 3 of the Convention, which reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. *The parties' submissions*

46. The Government submitted that the applicant's complaint under Article 3 of the Convention was premature, as the case concerning the legality of the applicant's extradition to China was pending before the Supreme Court (see paragraph 15 above) and no decision concerning extradition had been taken by the Minister of Justice (see paragraph 31 above).

47. The applicant argued that he had exhausted all domestic remedies concerning the extradition proceedings, including a request to the Commissioner for Human Rights to lodge a cassation appeal on his behalf.

2. *The Court's assessment*

(a) General principles

48. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014).

49. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, Reports of Judgments and Decisions 1996-IV).

50. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others*, cited above, § 71, and *Akdivar and Others*, cited above, § 66).

(b) Application of the above principles in the present case

51. In the present case, the applicant lodged an application (together with a request for an interim measure) after the domestic courts at two instances had held that his extradition to China would be in conformity with Polish law (see paragraphs 10 and 11 above), but before the Minister of Justice had decided on the extradition request (see paragraph 31 above). Moreover, the Commissioner for Human Rights subsequently lodged an extraordinary cassation appeal on behalf of the applicant, which was dismissed by the Supreme Court (see paragraph 16 above).

52. The Court notes that it has already ruled that a request to the Commissioner for him or her to lodge a cassation appeal cannot be regarded as constituting an effective remedy for the purposes of Article 35 § 1 of the Convention, since the Commissioner's decision in respect of such a request is of a discretionary nature, and an individual has no right to lodge such an appeal himself or herself (see *Hajnrich v. Poland* (dec.), no. 44181/98, 31 May 2001). Consequently, the fact that such an appeal has been lodged in the instant case is not relevant for the assessment of whether the applicant has exhausted the domestic remedies. This fact might be relevant solely (i) in order to determine an applicant's victim status for the purposes of Article 34 of the Convention (see, *mutatis mutandis*, *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 34-39, 24 October 2002) or (ii) as a reason for striking an application out of the list of cases, in accordance with Article 37 of the Convention, in the event that the outcome of such an appeal has been favourable to an applicant (ibid., §§ 40-49).

53. With regard to the decision of the Minister of Justice, the Court notes that this decision is a necessary step in the extradition procedure. As indicated above (see paragraphs 30-31 above), when deciding on the extradition of a person sought by another State, the Minister of Justice is bound by the judgments of the domestic courts as to the lawfulness of extradition. However, in cases in which the domestic courts have found no legal impediment to extradition, he or she reviews the situation of the person concerned and may still decide to refuse a request for extradition (particularly in the event that there are humanitarian or political grounds for so doing). In this respect the Minister's decision is purely discretionary. Moreover, the procedure for the issuance of the decision in question does not provide for any initiative on the part of the person concerned, or the hearing of him or her or for any other manner that would allow such a person could present additional arguments against his or her extradition or otherwise affect the issuance of the said decision.

54. Consequently, the Court considers that, even though the proceedings concerning the applicant's extradition are pending and the Minister has a possibility to refuse a request for the applicant's extradition, this step of the extradition proceedings cannot be seen as an effective remedy available to the applicant.

55. Accordingly, the Court dismisses the Government's objection concerning non-exhaustion of domestic remedies.

56. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

57. The applicant stated that his extradition to China would put him at risk of being subjected to torture and inhuman or degrading treatment or punishment. He argued that China was notorious for gross human rights violations – not to mention the widespread persecution of persons reporting instances of such abuse. The applicant also stated that the Government were unable to exclude the possibility that his extradition to China would result in a violation of Article 3 of the Convention, having acknowledged the occurrence of certain instances of gross human rights violations in that country.

58. Citing a judgment of the Swedish Supreme Court (case no. Ö 2479-19, 9 July 2019) by which that court had refused to extradite a Chinese citizen suspected of corruption (owing to the risk of a violation of Articles 2 and 3 of the Convention on account of his political activities), the applicant argued that the domestic authorities had failed to consider properly the political context of the case (in the light of his Taiwanese origin). He argued that the numerous reports that had been issued by international organisations substantiated the risk of ill-treatment.

59. The applicant further argued that the facts of his case should be differentiated from cases involving the expulsion or deportation to China of unsuccessful asylum seekers, to which the Government referred in their observations (see *Y. v. Russia*, no. 20113/07, 4 December 2008, and *Y.L. v. Switzerland* (dec.), no. 53110/16, 26 September 2017).

60. Referring to the fact that the Government had not asked for any diplomatic assurances and were content to accept informal guarantees from the Chinese authorities that the applicant would be detained at the Boluo Deportation Centre, where (according to those authorities) his human rights would be respected, he stated that such informal statements could not be considered sufficient (see paragraph 9 above).

2. The Government's submissions

61. The Government submitted that there were no grounds to deny the credibility and correctness of documents provided by the Chinese authorities. Referring to the supplementary information provided during the course of domestic proceedings (see paragraph 9 above), the Government submitted

that the Chinese detention centres were open to the public and that journalists were free to see for themselves the conditions prevailing therein.

62. In the Government's view the domestic courts had duly assessed the guarantees provided by the Chinese authorities and had found that the applicant would not be subjected to treatment contrary to Article 3 of the Convention. They further submitted that the applicant had failed to substantiate the allegations that he would face a risk of ill-treatment if extradited to China.

63. With regard to the reports of international organisations, such as those of Amnesty International, the Government indicated that the situations described therein did not constitute a valid obstacle to the applicant's extradition, especially since he was suspected of having committed a common crime, not a political, military or fiscal one. They further stated that the reports of abuse and torture relied on by the applicant concerned certain persons suspected of having committed other crimes and not the applicant. As such, they should be treated as generalised assessments.

64. The Government also referred to the fact that the findings of the domestic courts had been in line with those of Spanish courts that had allowed the extradition of 208 suspects, charged with participating in the same criminal group as had been the applicant, to China. They contested the relevance of the above-mentioned judgment delivered by the Swedish Supreme Court (see paragraph 58 above).

3. The Court's assessment

(a) General principles

65. The relevant general principles concerning the application of Article 3 within the context of extradition and expulsion have been summarised by the Court in the judgments *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, ECHR 2016), *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, ECHR 2016) and, more recently, *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, §§ 93-116, 29 April 2022).

66. The Court further reiterates that the assessment of whether the person concerned, if extradited, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention, should begin with the examination of the general situation in the destination country. In this connection, and where it is relevant to do so, regard must be had to whether there is a general situation of violence existing in the country of destination (see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 216, 28 June 2011). However, a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion to the country in question, unless the level of intensity of the violence is sufficient to conclude that any removal to that country would necessarily breach Article 3 of the Convention. The Court would adopt such an approach only in the most extreme cases,

where there is a real risk of ill-treatment simply by virtue of the individual concerned being exposed to such violence on returning to the country in question (see *Khasanov and Rakhmanov*, cited above, § 96, with further references therein).

67. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses, since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned and it is in principle for the applicant to submit the reasons in support of his claim and to adduce evidence capable of proving that there are substantial grounds for believing that the expulsion to his or her country of destination would entail a real and concrete risk of exposure to treatment in breach of Article 3 of the Convention (see, *mutatis mutandis*, *F.G. v. Sweden*, cited above, §§ 118 and 125, and *J.K. and Others v. Sweden*, cited above, §§ 91, 92 and 96). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State concerned is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources (see *F.G. v. Sweden*, cited above, § 117).

(b) Application of the above principles in the present case

(i) Assessment by the domestic authorities of the claims of a real risk of ill-treatment

68. The Court notes that the domestic courts examining the case of the applicant dismissed his claims regarding the alleged risk of ill-treatment and explained that he had failed to substantiate an individualised risk of being subjected to torture or other forms of ill-treatment.

69. Nevertheless, in that regard, the Court observes that the reference to the reports of international organisations was only superficial. Amnesty International, in a report invoked by the applicant, described widespread use of torture and other treatment prohibited by Article 3 of the Convention, which should have prompted the domestic courts to perform a more in-depth analysis of available sources. Where there are serious allegations of widespread ill-treatment in the country of destination, the domestic authorities have a special obligation to verify whether the person concerned would be exposed to a real risk of treatment contrary to Article 3 of the Convention (see, *mutatis mutandis*, *Amerkhanov v. Turkey*, no. 16026/12, § 53, 5 June 2018). The Court notes that the assessment of domestic courts did not include any analysis whatsoever of the most recent information provided, for example, by United Nations bodies and/or other international governmental or non-governmental organisations on the situation in Chinese detention facilities, which were easily available, should the courts have

decided to consult it *proprio motu* (see, *mutatis mutandis*, *J.K. and Others v. Sweden*, cited above, § 98).

70. Having regard to the above-noted considerations, the Court is not persuaded that the applicant's allegations were duly examined by the domestic authorities. The Court accordingly finds itself compelled to examine whether the applicant would be exposed to a real risk of ill-treatment proscribed by Article 3 of the Convention in the event of his extradition to China.

(ii) Examination by the Court of the alleged risk of ill-treatment

71. The Court notes that, if he were to be extradited, the applicant would be placed within the Chinese penitentiary system.

72. In the light of the general principles presented in paragraphs 65-66 above, the Court therefore first has to examine whether the mere placement of the applicant in a Chinese detention facility would subject him to a real risk of treatment contrary to Article 3 of the Convention. To do so, the Court has to analyse whether there is such widespread use of torture and other forms of ill-treatment within the Chinese penitentiary system that it can be equated to the existence of a general situation of violence. Consequently, the Court will focus on the general conditions of the detention facilities and penitentiaries in that State.

73. The Court reiterates that if the applicant has not already been extradited, the material point in time for the assessment of risks in the country of destination must be that of the Court's consideration of the case (see *Chahal v. the United Kingdom*, no. 22414/93, § 86, 15 November 1996). The Court shall therefore consider the latest country material available.

74. In this respect the Court notes that some of the reports on the situation in China referred to above dates back several years (see paragraphs 34-43). However, due to the apparently limited cooperation of the Chinese government with international human rights' protection bodies (see paragraphs 38 and 75-76), the Court must rely on the country material available to it, including – in the absence of other evidence furnished by the Government (see, *mutatis mutandis*, *J.K. and Others v. Sweden*, cited above, § 98) – reports issued by international and domestic governmental and non-governmental organisations. In assessing the weight to be attached to country material and reports, the Court will give careful consideration to the source of such material, in particular its reliability and objectivity, as well as the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources (see *Khasanov and Rakhmanov*, cited above, § 114).

75. The Court observes that China has signed the International Covenant on Civil and Political Rights (ICCPR) but has not ratified it. Consequently, under both customary international law and Article 18 of the Vienna

Convention on the Law of Treaties, its obligations are limited to refraining from acts that would defeat the object and purpose of that Covenant. The Chinese government is thus exempted from the reporting system of the United Nations Human Rights Committee (HRC), and individuals may not complain to the HRC about alleged violations of those of their rights that are protected by the ICCPR.

76. In 1988 China ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; however, it is not a party to the Optional Protocol to it, which established an individual complaint mechanism. Moreover, upon ratifying that Convention, China declared that it did not recognise the authority – as provided by Article 20 thereof – of the CAT to perform an inquiry.

77. In consequence, it is not possible for individuals who allege that their basic human rights have been breached to have recourse to any independent international protection mechanism (compare *D.I. v. Bulgaria*, no. 32006/20, § 75, 14 December 2021), or for any independent international body to perform an onsite inquiry in China without the latter's invitation.

78. The Court further observes that despite certain improvements in the Chinese domestic legislation regarding the prohibition and prevention of torture, several significant shortcomings remain in place. Notwithstanding the fact that serious allegations of widespread use of torture and inhuman and degrading treatment in Chinese detention centres continue to be raised (see paragraphs 36-44 above), statistical data pertaining to such events are being withheld by the Chinese authorities and treated as State secrets, making their scale impossible to ascertain. It is thus unclear whether the system of supervision of detention facilities by prosecutors is effective and whether it provides sufficient guarantees of protection against ill-treatment (see paragraph 32 above).

79. In its Concluding Observations of 12 December 2008 on China, the CAT expressed deep concerns about "routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings" and "reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment" (see paragraph 35 above). The CAT further noted that the classification of a case falling under the State Secrets law allowed officials to deny detainees access to lawyers, a fundamental safeguard for preventing torture (ibid.). In its Concluding Observations of 3 February 2016 on China, the CAT expressed concerns over consistent reports indicating that the practice of torture and ill-treatment was still deeply entrenched in the criminal justice system, which overly relied on confessions as the basis for convictions (see paragraph 36 above). The Court further notes that the United Nations Special Rapporteur on torture observed that "torture remained widespread in China ..." (see paragraph 37 above). As reported by Amnesty International, the lawyers who raised claims of torture and attempted to have them

investigated often faced torture themselves as a means of repression and dissuasion (see paragraph 40 above). Mistreatment and torture of detainees and prisoners were also reported by the United States Department of State, Human Rights Watch and Freedom House (see paragraphs 39 and 43-44 above).

80. The Court has repeatedly stated that the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States (see *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, § 129, 17 January 2012). However, where there are many significant shortcomings in the domestic legislation in the country of destination and allegations of serious abuses identified in independent reports, coming from numerous sources, the benefit of the doubt should be granted to an individual seeking protection (see *J.K. and Others v. Sweden*, cited above, § 98).

81. The Government submitted that according to the Chinese authorities the applicant, following his extradition, would be held at a facility where all his basic rights would be guaranteed. They further maintained that detention centres were open to the public and journalists, so that they could see the conditions prevailing in them. The Court finds this argument unconvincing. It notes that the Chinese authorities, in their submissions to the Warsaw Regional Court (see paragraph 9 above) mentioned a single detention centre (in Beijing), to which journalists were allowed entry in 2012, whereas the applicant would be detained in Boluo – a city located more than 2,000 kilometres away from Beijing. Moreover, in the last decade the Chinese government has apparently ignored requests for onsite visits by representatives of international organisations (see paragraph 38 above). This in turn significantly limits the credibility of the above-mentioned informal assurances about the accessibility of the Chinese detention facilities to the public and of Chinese guarantees concerning protection against torture and other forms of ill-treatment. In the light of information contained in reports issued by the CAT, it seems highly unlikely that members of the public or journalists would be allowed entry to a Chinese detention facility. In any event, no evidence confirming that claim has been furnished by the Government or mentioned by the domestic courts, apart from informal guarantees presented by the Chinese authorities. Nor was there any information available about the actual conditions of detention in the Boluo Detention Centre.

82. The Court further observes that the Government obtained only informal declarations from the Chinese authorities that the applicant's human rights would be respected (see paragraph 9 above). It notes that the Government did not seek any diplomatic assurances such as would allow the Court to evaluate whether such assurances would offer in practice a sufficient guarantee that the applicant would be protected against the risk of ill-treatment (see, *mutatis mutandis*, *Khasanov and Rakhmanov*, cited above,

§ 101, and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 187-189, ECHR 2012).

83. Consequently, having regard to the parties' submissions and to the above-mentioned reports issued by various United Nations bodies as well as by international and national governmental and non-governmental organisations, to which the Court attaches considerable weight (see *Sufi and Elmi*, cited above § 231), it considers that the extent to which torture and other forms of ill-treatment are credibly and consistently reported to be used in Chinese detention facilities and penitentiaries (see paragraph 79 above), may be equated to the existence of a general situation of violence. Thereby the applicant is relieved from showing specific personal grounds of fear, it being enough that it is established that, upon extradition, he will be placed in a detention centre or penitentiary (see, *Khasanov and Rakhmanov*, cited above, § 96). Since it is uncontested that the applicant would be detained in China if the extradition order was implemented, the Court finds it established that the applicant would face a real risk of ill-treatment if extradited to that State.

84. Accordingly, it holds that the extradition of the applicant to China would constitute a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

85. The applicant also complained under Article 5 § 1 of the Convention that the proceedings in respect of his detention pending extradition had been arbitrary and unduly lengthy. Article 5 § 1 reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

1. The parties' submissions

86. The Government submitted that the complaint under Article 5 § 1 (f) of the Convention was inadmissible owing to non-exhaustion of domestic remedies. They indicated that the applicant had appealed neither against the first decision to place him in detention pending extradition delivered by the Warsaw Regional Court on 8 August 2017 (see paragraph 20 above) nor against the decisions prolonging that detention delivered, respectively, on 12 January, 13 April, 12 September 2018 and 12 February 2019 (see paragraph 23 above).

87. The applicant disagreed. He indicated that he had appealed against the first decision of the Warsaw Regional Court of 14 September 2017 extending

his detention and subsequent decision of the same court of 12 January 2018. The applicant further submitted that according to the well-established case-law of the Court (in particular, *Marchowski v. Poland*, no. 10273/02, § 54, 8 July 2008), applicants were not required to appeal against each and every decision extending their detention.

2. The Court's assessment

88. With regard to complaints under Article 5 § 3, the Court has already held that an appeal against a detention order, a request for release (whether lodged with a prosecutor or with a court, depending on the stage of the proceedings) and an appeal against a decision extending detention all serve the same purpose under Polish law: their objective is to secure a review of the lawfulness of detention at any point during a set of proceedings (including extradition proceedings) and to obtain release if the circumstances of the case in question no longer justify continued detention (see, *inter alia*, *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007, and *Gracki v. Poland*, no. 14224/05, § 33, 29 January 2008). In cases in which numerous decisions extending an applicant's detention have been delivered, it is sufficient that the applicant appealed against some of them, including the decision taken at the time when the length of detention had reached its critical point (see *Ruciński v. Poland*, no. 33198/04, § 28, 20 February 2007).

89. The Court considers that the same approach should be taken in cases in which an applicant, relying on Article 5 § 1 (f), questions the lawfulness of his or her detention pending extradition. It is particularly relevant where, as in the present case, the applicant stresses that the alleged arbitrariness of his or her detention is related to its undue length.

90. In the present case, the applicant has been detained pending extradition proceedings for over four years; that detention has been extended several times. The applicant appealed against four decisions extending his detention, including the two most recent decisions (see paragraphs 27-28 above).

91. It follows that the complaint under Article 5 § 1 (f) cannot be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. The Court furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

92. The applicant argued that the Polish authorities had not acted with due diligence, as he had been detained for over three years and the domestic authorities had failed to act more expeditiously. He submitted that the proceedings could have been conducted more speedily and that he had not

contributed to any delays. He also emphasised that the application of the interim measure by the Court had not meant that the applicant had to be kept in detention, and that ordering his prolonged detention had been solely the responsibility of the domestic authorities.

93. The Government submitted that the applicant's detention had been ordered with a view to ensuring the proper conduct of the extradition proceedings. They argued that it had been necessary in the light of the circumstances of the applicant's case – in particular the fact that he had fled justice before, his extensive travels and financial means, and his ability to freely cross national borders within the Schengen zone.

94. The Government furthermore maintained that the proceedings before the Warsaw Regional Court and the Warsaw Court of Appeal had lasted for approximately one year – until 26 July 2018 – and that their length had been justified in particular by the need to request additional information from the Chinese authorities (see paragraph 9 above). With respect to the period following that date, the Government emphasised that the applicant's extradition could not have taken place owing to the Government's obligation to respect the interim measure indicated by the Court on 12 September 2018 (see paragraph 14 above). They stipulated that the Minister of Justice had decided to postpone issuing a decision on extradition until such time as the Court decided on the present application.

95. In addition, the Government indicated that the wording of the decisions concerning the prolongation of the applicant's detention had presented comprehensive reasons for the need for the continuous application of that measure and had been in no way arbitrary.

2. The Court's assessment

(a) General principles

96. The Court reiterates that Article 5 § 1 (f) of the Convention does not demand that detention be reasonably considered necessary – for example, to prevent an individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Chahal*, cited above, § 113, and *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

97. The deprivation of liberty under Article 5 § 1 (f) of the Convention must be "lawful". Where the "lawfulness" of detention is at issue (including the question of whether "a procedure prescribed by law" has been followed), the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1

requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (*A. and Others v. the United Kingdom* [GC], § 164, with further references). It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention (see, for instance, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67 et seq., ECHR 2008). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Rustamov v. Russia*, no. 11209/10, § 150, 3 July 2012, and *Al Husin v. Bosnia and Herzegovina (no. 2)*, no. 10112/16, § 97, 25 June 2019).

(b) Application of the above principles in the present case

98. The applicant was arrested on 6 August 2017 and remains in detention. It was not disputed between the parties that his detention had been ordered with a view to his extradition from Poland and fell within the ambit of sub-paragraph (f) of Article 5 § 1 of the Convention.

99. The Court notes that the overall length of the applicant's detention may be divided into two periods. The first period lasted less than one year - between 6 August 2017 (the date of the applicant's arrest) and 26 July 2018 (the date of the Warsaw Court of Appeal's decision in this case). That period can mostly be attributed to the fact that two sets of proceedings were taking place simultaneously: the extradition and asylum proceedings. Those proceedings were pursued by the authorities with due diligence, and the Court cannot detect any long periods of inactivity imputable to the State during that time.

100. However, the same is not true in respect of the period from 26 July 2018 to present. The Government asserted that this period was mainly attributable to the interim measure indicated by the Court under Rule 39 on 12 September 2018, as it had prevented the Minister of Justice from issuing an extradition decision. The Court notes that the Government at the same time argued that the domestic proceedings had not yet finished, as the case concerning the legality of the applicant's extradition was pending before the Supreme Court (see paragraph 46 above).

101. The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I). However, the implementation of an interim measure following an indication by the Court to a State Party that it would be desirable not to return an

individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). On the one hand, the application of an interim measure by the Court does not necessarily entail detention, which can be applied only in strict compliance with domestic law and after considering alternative solutions (see *Keshmiri v. Turkey (no. 2)*, no. 22426/10, § 34, 17 January 2012, and *Al Husin*, cited above, § 68). On the other hand, if – as in the present case – extradition proceedings are still in progress, the fact that an interim measure has been indicated cannot absolve the respondent Government from its obligation to conduct those proceedings with the same proper diligence as all extradition proceedings entailing detention under Article 5 § 1 (f) of the Convention.

102. Within this context the Court notes that the extradition proceedings in the applicant's case were not stayed owing to the interim measure indicated by the Court. On the contrary, when the measure was applied, the Commissioner for Human Rights had already requested the applicant's case-file in order to be able to consider the possibility of lodging a cassation appeal on behalf of the applicant (see paragraph 13 above). Such a cassation appeal was lodged almost eight months later, on 7 May 2019. The Supreme Court held a hearing in the applicant's case and delivered its judgment on 1 October 2020 (that is to say, after a year and four months; see paragraph 16 above). Consequently, the Government's argument that the applicant's detention after 12 September 2018 was mainly attributable to the interim measure indicated by the Court under Rule 39 is unfounded. The Court notes that the final judgment of the Supreme Court was delivered two years after the interim measure had been indicated. At the time of the Supreme Court's judgment, the applicant had already been detained for a considerable period of time (namely, three years and two months).

103. In the light of the foregoing, the Court concludes that the domestic authorities failed to act with due diligence and ensure that the length of the applicant's detention did not exceed the time that could be reasonably required for the purpose pursued.

104. Consequently, having regard to the nature of the extradition proceedings, whose aim is to ensure that the prosecution of the applicant would be pursued in another State, and the unjustified delays in the Polish proceedings, the Court finds that the applicant's detention was not "lawful" within the meaning of Article 5 § 1 (f) of the Convention and that there has therefore been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

105. Under Article 6 § 1 of the Convention, the applicant complained that he would be at real risk of a flagrant denial of justice if he were to be tried in China.

Article 6, in so far as relevant, reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

106. The Court has found above that the applicant's extradition to China would result in a violation of Article 3 of the Convention (see paragraph 84 above). In view of this, the Court considers that it is not necessary to examine whether, in the present case, there would also be a violation of Article 6 § 1 of the Convention.

IV. RULE 39 OF THE RULES OF COURT

107. In accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber, or (b) three months after the date of the judgment, if the referral of the case to the Grand Chamber has not been requested, or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

108. The Court considers that the indications made to the Government under Rule 39 of the Rules of Court (see paragraph 14 above) must remain in force until the present judgment becomes final or until the Court takes a further decision in this regard.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

110. The applicant claimed 60,000 euros (EUR) in respect of pecuniary damage (on account of lost earnings for the period of his detention) and EUR 50,000 in respect of non-pecuniary damage.

111. The Government submitted that the amounts indicated by the applicant were excessive and unjustified.

112. The Court finds that the applicant did not present any evidence to substantiate his claims in respect of the pecuniary damage alleged; it therefore

rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

113. The applicant also claimed EUR 12,600 for the costs and expenses incurred before the domestic courts. He did not claim anything for the costs and expenses incurred before the Court, since his lawyer had represented him *pro publico bono*.

114. The Government submitted that any claim concerning the costs of the extradition proceedings was premature, as the proceedings were still pending and the domestic courts were still about to decide on the costs of those proceedings.

115. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 12,600 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant.

C. Default interest

116. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that in the event of the applicant's extradition to China, there would be a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that it is not necessary to examine the complaint under Article 6 § 1 of the Convention;

5. *Decides* to continue the application of the interim measure indicated to the Government under Rule 39 of the Rules of Court on 12 September 2018 until such time as the present judgment becomes final or until otherwise decided;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 12,600 (twelve thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President